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**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #12-273

**DIGEST**

Adds [312 IAC 2-5](#) to provide standards for informal review within the Department of Natural Resources, and to acknowledge the opportunity for administrative review to the Natural Resources Commission under [IC 4-21.5](#), of unsuccessful test results and accreditation of continuing education programs, that apply if a law requires successful testing or compliance with continuing education requirements, for an individual to conduct a vocation or avocation, and the law makes the Department of Natural Resources responsible for testing or continuing education. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

**[312 IAC 2-5](#)**

SECTION 1. [312 IAC 2-5](#) IS ADDED TO READ AS FOLLOWS:

**Rule 5. Review of Determinations for Testing and Programs for Continuing Education**

**[312 IAC 2-5-1](#) Applicability**

Authority: [IC 14-10-2-4](#); [IC 25-39-4-9](#)

Affected: [IC 14](#); [IC 25-39](#)

**Sec. 1. (a) This rule applies to a department determination that:**

**(1) a person has failed a test; or**

**(2) the sponsor of a continuing education program or license applicant has not satisfied minimum requirements for the department to sanction credit for the program;**

**if successful completion of the test or continuing education is required, by a statute or rule, for conduct of an activity licensed by the department.**

**(b) The requirements of this rule are in addition to any requirements for licensure or continuing education set forth by statute or another rule for a program that is governed by subsection (a).**

*(Natural Resources Commission; [312 IAC 2-5-1](#))*

**[312 IAC 2-5-2](#) Informal review of test failure by administering division**

Authority: [IC 14-10-2-4](#); [IC 25-39-4-9](#)

Affected: [IC 14](#); [IC 25-39](#)

**Sec. 2. (a) A license applicant that is notified of a fail score on a written or practical examination may seek informal review from the director of the division, or the division director's designate, of the examination results.**

**(b) An applicant must submit the request for informal review with the director of the division, or the division director's designate, within the earlier of:**

**(1) fifteen (15) days if notification of a fail score included the address of the person to whom the request must be directed and a statement the request must be made within fifteen (15) days of the notice; or**

**(2) ninety (90) days if the notification of a fail score did not include the information described in subdivision (1).**

**(c) The division shall conduct the review in an informal manner. If requested by the applicant, the**

division shall confer with the applicant at the division's office before deciding the informal review.

(d) The division director or the division director's designate may take any appropriate action, including retesting or the issuance of a license, if determining the fail score was the likely result of any of the following:

- (1) A significant procedural error by the division.
- (2) Adverse environmental conditions immediately preceding or during the test administration.
- (3) Both of the following:
  - (A) The applicant was within ten percent (10%) of a passing score.
  - (B) A test question or questions is demonstrated to exhibit fundamental ambiguity that could be reasonably expected to cause an applicant to select an answer other than the answer identified by the division as correct.

(Natural Resources Commission; [312 IAC 2-5-2](#))

### **[312 IAC 2-5-3](#) Informal review of administering division's determination not to credit a continuing education program**

Authority: [IC 14-10-2-4](#); [IC 25-39-4-9](#)

Affected: [IC 14](#); [IC 25-39](#)

Sec. 3. (a) The sponsor of a continuing education program or a license applicant who attends a continuing education program may seek informal review from the director of the division, or the division director's designate, of a decision by the division not to authorize credit or to authorize fewer credits than the sponsor or license applicant believes are appropriate.

(b) A sponsor or an applicant must submit the request for informal review with the division director or the division director's designate. To qualify for administrative review under section 4 of this rule, a request for informal review under this subsection must be made before the program is presented.

(c) The division shall conduct the review in an informal manner. If requested by the sponsor or applicant, the division shall confer with the sponsor or applicant at the division's office before deciding the informal review.

(d) The division director or the division director's designate may take any appropriate action, including approving credit or additional credits, if the division is provided with sufficient written documentation to determine a continuing education program:

- (1) includes information significant to the governing statute or rule that was not previously known to the division; or
- (2) provides innovative or specialized instruction to a limited constituency, with extraordinary educational needs, and that is likely to enhance the interests protected or promoted by the governing statute or rule.

(Natural Resources Commission; [312 IAC 2-5-3](#))

### **[312 IAC 2-5-4](#) Administrative review**

Authority: [IC 14-10-2-4](#); [IC 25-39-4-9](#)

Affected: [IC 4-21.5](#); [IC 14](#); [IC 25-39](#)

Sec. 4. (a) A division director or the division director's delegate shall notify a person in writing who seeks review under section 2 or 3 of this rule, within thirty (30) days after completion of the review, of the division's decision.

(b) The notification provided under subsection (a) shall advise the recipient of the opportunity to seek administrative review of the division's decision, under [IC 4-21.5](#) and [312 IAC 3-1](#), within eighteen (18) days

**of issuance of the notice.**

(Natural Resources Commission; [312 IAC 2-5-4](#))

[Notice of Public Hearing](#)

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